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FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL 14L-25R

DATE RECEIVED: October 7, 2014

DATE OF NOTIFICATION: October 15, 2014

DATE OF LAST RESPONSE: November 25, 2014

DATE ACTIVATED: June 1, 2015

EARLIEST SOL: February 21, 2019

LATEST SOL: February 21, 2019

ELECTION CYCLE: 2014

SOURCE:

Internally Generated

RESPONDENT:

Warriors for Liberty and Scott B. Mackenzie in
his official capacity as treasurer¹

RELEVANT STATUTES:

52 U.S.C. § 30104(a)-(b)²

11 C.F.R. § 104.1(a)

11 C.F.R. § 104.3

11 C.F.R. § 111.43(a), (d), (e)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Commission's Alternative Dispute Resolution Office ("ADRO") referred Warriors for Liberty and Scott B. Mackenzie in his official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose receipts totaling \$241,026.52,

¹ Mary Jo Lalor was the treasurer at the time of the activity at issue in this matter. See Statement of Organization (May 22, 2013), available at <http://docquery.fec.gov/pdf/694/13031071694/13031071694.pdf>. On February 6, 2014, the Committee filed an amended Statement of Organization designating Scott Mackenzie as its treasurer. See Statement of Organization (Feb. 6, 2014), available at http://docquery.fec.gov/cgi-bin/fecimg?_14031181923+0.

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

1 disbursements totaling \$225,995.28, and debts totaling \$125,519.20, which collectively totaled
2 \$592,541, on its original 2013 Year-End Report.³

3 Based on the available information, we recommend that the Commission open a matter
4 under review ("MUR") and find reason to believe that the Committee violated 52 U.S.C.
5 § 30104(b) by failing to accurately disclose receipts, disbursements, and debts. Additionally, we
6 recommend that the Commission enter into pre-probable cause conciliation with the Committee
7

8 II. FACTS

9 The Committee is a multicandidate political committee registered with the Commission.⁴
10 On January 31, 2014, the Committee timely filed its 2013 Year-End Report covering the period
11 from July 1, 2013, through December 31, 2013. The report disclosed no receipts, disbursements,
12 or debts.⁵ On February 21, 2014, the Committee filed an Amended 2013 Year-End Report that
13 disclosed \$241,026.52 in receipts, \$225,995.28 in disbursements, and \$125,519.20 in debts.⁶

14 On April 14, 2014, RAD sent the Committee a Request for Additional Information
15 ("RFAI") regarding the substantial increase in receipts, disbursements, and debts disclosed on
16 the Amended 2013 Year-End Report that were not disclosed on the original filing.⁷

³ See Memorandum from Lynn Fraser, Director, ADRO, FEC, to Gregory R. Baker, Deputy General Counsel-Administration, OGC, FEC (Sept. 30, 2014); Reports Analysis Division ("RAD"), Referral of Warriors for Liberty, 14L-25 (July 10, 2014) ("Referral"), incorporated herein by reference.

⁴ See Statement of Organization (May 22, 2013), *available at* <http://docquery.fec.gov/pdf/694/13031071694/13031071694.pdf>.

⁵ See Committee 2013 Year-End Report (Jan. 31, 2014), *available at* <http://docquery.fec.gov/pdf/086/14031173086/14031173086.pdf>.

⁶ See Committee 2013 Amended Year-End Report (Feb. 21, 2014), *available at* <http://docquery.fec.gov/pdf/881/14940533881/14940533881.pdf>.

⁷ See Referral at 2.

On May 28, 2014, the Committee filed a Miscellaneous Electronic Submission ("Form 99"), citing the actions of the previous treasurer as the reason for the errors.⁸ The Committee states that when the current treasurer assumed control in February 2014, he amended prior Committee disclosure reports "as the previous Treasurer was not experienced" and "had difficulty using the FECfile software."⁹ The Committee also notes that "nearly 7,000 transactions," most from the Committee's small donor program, overwhelmed the prior treasurer, who was unprepared to file them.¹⁰ On July 10, 2014, RAD referred the Committee to ADRO for failing to disclose receipts, disbursements, and debts that collectively totaled \$592,541 on its original 2013 Year-End Report.¹¹ The Committee did not respond to ADRO's offer to participate in the ADR process, and ADRO referred the matter to OGC pursuant to the Commission's procedures to refer a matter to OGC when a committee elects not to participate in

⁸ See Warriors for Liberty, Form 99 (May 28, 2014), available at <http://docquery.fec.gov/pdf/326/14961229326/14961229326.pdf>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Memorandum from Deborah Chacona, Asst. Staff Director, RAD, FEC, to Lynn Fraser, Director, ADRO, FEC (July 10, 2014). RAD referred this matter to ADRO pursuant to the ADRO threshold set forth in Standard 7 of *Reports Analysis Division Review and Referral Procedures for Unauthorized and Authorized Committees for 2013-2014 Election Cycle* at 73-74 (the "Referral Procedures") (approved by Comm'n Feb. 5, 2013). Standard 7 of those procedures states that a case will be referred to ADRO when a committee files an amendment(s) or more business days after the filing date of the original report (or after the report due date, whichever is latest), which discloses an increase or decrease in receipts, disbursements, or debts of or more and, for a non-election-sensitive report, an increase or decrease in excess of and less than or equal to . In this matter, the increased activity reflected \$241,026.52 in receipts, \$225,995.28 in disbursements, and \$125,519.20 in debts, an increase of over in receipts, disbursements, and debts, and occurred on a non-election-sensitive report. See 11 C.F.R. § 111.43(d)(1) (election-sensitive reports do not include the Year-End Report).

1 the ADR process.¹² On October 14, 2014, OGC notified the Committee about the Referral.¹³

2 The Committee's response to the Referral reiterates that the inexperience of the previous
3 treasurer contributed to the reporting errors in this matter and includes the full text of the
4 Committee's May 28, 2014, Form 99.¹⁴ The Committee further explains that the "unreported
5 transactions were those of a direct mail fundraising program and the receipts and disbursements
6 were handled through an Escrow Account,"¹⁵ and the prior treasurer learned that those
7 transactions needed to be disclosed shortly after the original report had been filed.¹⁶ From there,
8 "it was decided that a new [t]reasurer needed to be brought to correct the discrepancy." Finally,
9 the Committee states that it "has ceased its activities and made the decision to terminate upon
10 completion of this process."¹⁷

¹² While this matter does not meet RAD's thresholds for initial referral to OGC, *see* Referral Procedures at 74 (requiring increased activity in excess of on a non-election-sensitive report), ADRO's introductory letter to the Committee states in bold print: "[f]ailure to respond affirmatively within fifteen (15) business days of receipt of this letter will be taken as a notice of disinterest in the program and your case will be dropped from further consideration for ADR," and then states "[i]n that event, your case will be sent to the FEC's Office of General Counsel for further processing." Letter from Krista Roche, Assistant Director, ADRO, FEC, to Scott B. MacKenzie, Treasurer of the Committee at 2 (July 24, 2014). *See also* *Guidebook for Complainants and Respondents on the FEC Enforcement Process* at 23 (May 2012). *See* Memorandum from Lynn Fraser, Director, ADRO, FEC, to Gregory R. Baker, Deputy General Counsel-Administration, OGC, FEC (Sept. 30, 2014).

¹³ Letter from Jeff S. Jordan, Assistant General Counsel-Complaints Examination and Legal Administration, FEC to Scott B. MacKenzie, Treasurer of the Committee (Oct. 14, 2014); *see also* *Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617 (Aug. 4, 2009).

¹⁴ Committee Resp. at 1 (Nov. 24, 2014).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* On January 15, 2015, the Committee filed a Form 99 stating that it had agreed to affiliate with Veterans Victory Fund ("VVF"). *See* Warriors for Liberty, Form 99 (Jan. 15, 2015), *available at* <http://docquery.fec.gov/pdf/637/15970018637/15970018637.pdf>. Consequently, the Committee states that both entities "agreed to combine operations and operate through VVF with WFL discontinuing all activity." *Id.* The Form 99 also lists debts totaling \$164,494.77 that the Committee transferred to VVF.

1 **III. LEGAL ANALYSIS**

2 The Act requires committee treasurers to file reports of receipts and disbursements in
3 accordance with the provisions of 52 U.S.C. § 30104.¹⁸ These reports must include, *inter alia*,
4 the total amount of receipts and disbursements, including the appropriate itemizations, where
5 required.¹⁹ Additionally, the Act and Commission regulations require political committees to
6 disclose the amount and nature of outstanding debts and obligations until those debts are
7 extinguished.²⁰

8 Here, the Committee did not comply with the Act's reporting requirements when it failed
9 to disclose receipts, disbursements, and debts that collectively totaled \$592,541 on its original
10 2013 Year-End Report. We therefore recommend that the Commission open a MUR and find
11 reason to believe that the Committee violated 52 U.S.C. § 30104(b).²¹

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¹⁸ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

¹⁹ See 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(a)-(b).

²⁰ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a). A political committee must file separate
schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions
under which each debt and obligation was incurred or extinguished. 11 C.F.R. § 104.11(a). A debt or obligation of
\$500 or less must be reported as of the time that payment is made or within sixty days of the date on which the
political committee incurs the debt, whichever comes first, and a debt exceeding \$500 must be disclosed in the
report that covers the date on which the debt was incurred. 11 C.F.R. § 104.11(b).

²¹ See Certification, MUR 6759 (California Real Estate PAC) (Oct. 22, 2013) (Commission found reason to
believe where ADRO referred committee to OGC for increased activity after the committee declined to participate
in the ADR program).

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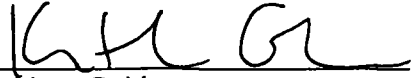
V. RECOMMENDATIONS


1. Open a MUR.
2. Find reason to believe that Warriors for Liberty and Scott B. Mackenzie in his official capacity as treasurer violated 52 U.S.C. § 30104(b).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Warriors for Liberty and Scott B. Mackenzie in his official capacity as treasurer prior to a finding of probable cause to believe.
- 5.


6. Approve the appropriate letter.

7-2-15

Date


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